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ABSTRACT

As school budgets face serious problems, one area under examination is the cocurricular activities section of the school budget. Many districts are charging user fees to students participating in school sports, band, drama, and even elective courses. Since no direct reference is made to education in the United States Constitution, education is a function of each state. The definition of "free education" varies from state to state and even from district to district. Currently California, New Jersey, New York, and Oklahoma require that any educational program (including cocurricular activities) must be offered free of charge. Other states allow user fees to be assessed for some activities. Examination of state practices reveals a wide variation across the country. But even after examining state statutes, court cases, school policies, and opinions from schools and attorneys throughout the country, the issue of assessing student fees for some classes and activities remains unresolved. There seems to be little question that basic curricular activities should be provided without charge. Local school boards generally reach compromise solutions on how elective courses and cocurricular activities should be funded. The battle for budget dollars may drive a deeper wedge between cocurricular activities and academics and probably end a cooperative era in which both were considered essential. (MD)

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PAY FOR PLAY
FEES FOR COCURRICULAR ACTIVITIES

"When I cut $350,000 from our teacher salary account, I heard not a murmur; when I attempted to reduce the cocurricular budget by $78,000, all hell broke loose. Even my own family would not speak to me," said a beleaguered superintendent.

Schools are experiencing the same difficulties households are facing: an unstable economy and shifting values. But education is presented with additional problems--most importantly, deciding the purpose and direction of each school. The American public seems to be presenting contradictory directives to educators, especially considering the limitations of time and money. The local community and the federal government expect schools to offer a well-rounded education which includes a variety of special academic programs and cocurricular activities no matter what the school's financial situation may be.

Until recently, the battle for the budget dollars was between the school board and other city agencies, such as police, fire, and highways. But the escalating costs of education coupled with a decrease in federal and state assistance and caps on local funding have caused havoc in public school budgets. Today the public is scrutinizing budgets and demanding accountability for its tax dollars.

Academics or Athletics

One area under continuous examination is the cocurricular activities section of the school budget. The local taxpayer, via the board of education, is often forcing a choice between supporting academics or cocurricular activities, both of which used to be considered essential in the total educational program. More and more, boards of education are considering a compromise: fund the academic program from tax dollars and charge a "pay-for-play," or user fee to those students who participate in an interscholastic team--the band, drama, or sometimes, even elective courses.

EA 017 332

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

No direct reference to education is made in the Constitution of the United States so, legally, education is regarded as a function and responsibility of each state. Article Eight of the Constitution of the State of Connecticut contains wording similar to that found in many other state constitutions:

> There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation. (Underlining added.)

But the definition of the term "free" education may vary from state to state and even from district to district. The legality of charging students for curricular, cocurricular, and noncurricular activities has been considered by state courts for many years. In 1895, the Christian Circuit Court in Kentucky ruled in Major v. Cayce, Case 60, Petition Equity (98 Kentucky, 357, 1895) that a school should offer free instruction in the basic curriculum. If a student wished to take higher branches of instruction, such as algebra, Latin, or bookkeeping, that student could hire the teacher to teach those courses. The court observed that all children received the same basic education and all had the opportunity to contract with the teacher for additional instruction.

Currently, California, New Jersey, New York, and Oklahoma require that any school-sponsored curricular or cocurricular activity be offered free of charge. In fact, the Supreme Court of California recently ruled in Hartzell v. Connell, 679 P.2d 35 (1984) that all educational activities, whether curricular or cocurricular, must be offered free of charge.

> ... Access to public education is a right enjoyed by all--not a commodity for sale. Educational opportunities must be provided to all students without regard to their families' ability or willingness to pay fees or request special waivers. This fundamental feature of public education is not contingent upon the inevitably fluctuating financial health of local school districts.

Vermont has no statutory regulation which prohibits the charging of fees; however, Robert B. Luce, legal counsel for the State Department of Education, believes such a practice is not permissible. This same ambiguous situation also exists in Maine. The legislature there recently defeated a bill that would make user fees illegal as they related to cocurricular activities. The matter is still undecided because the legislators did not indicate how local boards of education should interpret this defeat.

In Idaho, students may be charged fees for electing to participate in cocurricular activities. As the State Supreme Court noted in Paulson v. Minidoka County, 463 P2d 935 (1970), "social and extracurricular activities are not necessary elements of a high school career." The Wisconsin Supreme Court in Board of Education v. Sinclair, 222 N.M. 2d 143 (1974) and the Supreme Court of Montana in Granger v. Cascade County, 499 P.2d 780 (1972) reached the same conclusion.

Required or Elective Courses

In some states, such as Iowa and New Mexico, those courses required for graduation are excluded by law from any tuition charge or fee schedule, but fees may be charged for elective courses.

Iowa lists only four courses as being required of all high school students for graduation. Some legislators have suggested that only these four courses must be offered free of charge. As Assistant Attorney General Steven G. Norby noted, "To limit this prohibition to courses required to be taken by statute would result in guaranteeing free instruction only in American history, U.S. and Iowa government, and physical education, certainly an absurd result."

The same issue was resolved in New Mexico. The state constitution guaranteed a free public school system for all children of school age. In 1955 the attorney general ruled that activity fees could not be charged for courses which were required as a condition for attending public schools. Though this restriction was reaffirmed in Norton v. Board of Education, 89 N.M. 470, 553 P.2d 1277 (1976), the court also stated that:

> The words in our Constitution, "free public schools sufficient for the education..." do not mean that all courses offered should be free. Only those courses "sufficient for the education" should be "free" in the sense of this constitutional provision.

The Attorney General of South Carolina, George C. Beighley, gave a similar opinion. "It has never been assumed by the court or legislature in South Carolina that 'free education' is to be given its unbound literal meaning." In fact, many school districts in the state do charge fees for various programs and activities, often referred to as "matriculation or incidental fees." Before a district may institute these fees, though, the General Assembly must grant special authority to that district.

Reasonable Incidental Fees

More and more states either have or are considering enacting legislation that would allow school districts to assess reasonable incidental fees. Minnesota, Virginia, Colorado, and Utah allow the charging of user fees, providing they are for cocurricular, noncurricular,or supplementary activities.

Louisiana has a simple procedure for its cocurricular programs. State superintendent J. Kelly Nix explained that:

> For the most part, any costs of extracurricular activities are borne directly by the student without the school board taking any money for administrative expenses or charging any fee for providing space of a faculty sponsor.

In stating that user fees could be charged, Wyoming's special assistant attorney general Donald L. Painter offered the following reasoning:

> Since extracurricular activities are not part of the free public school system to which everyone is entitled by law, it follows that persons are not legally discriminated against by being required to pay to attend these activities.

In Kentucky, school districts have always been legally able to charge fees for cocurricular activities provided that no child is denied the opportunity to participate in any educational program because of a parent's inability to pay. Attorney general Steven Beshear added that:

> This office well understands the significant burden imposed by the charging of fees to parents for children attending Kentucky's public common schools. However, the General Assembly has authorized fees in part at least due to a lack of sufficient state revenues for this purpose.

The Kentucky Association of School Administrators reported in 1982 that approximately 415,000 students, or 73 percent of those enrolled in secondary schools, attended schools in which fees were charged. These fees were charged for both academic courses (especially business, home economics, and science) and nonacademic programs.

Several court cases have addressed this subject. The charging of a two dollar matriculation fee was upheld in the South Carolina case of Felder v. Johnston, 121 S.E. 54 (1923) because the petitioner did not present any evidence that would indicate the action of charging a fee was unauthorized:

> In the absence of evidence to the contrary, courts are bound to presume that public officers have properly discharged their duties and that their acts are in all respects regular.

A recent Illinois case, Ambrioggio v. Board of Education, 101 Ill. App. 3d 187 (1981) ruled that students could be charged a lunchroom supervision fee:

> (I)f they lived within .7 of a mile from school, were not provided with bus transportation to and from school and ate their lunches in the school lunchroom. Students provided with bus transportation, or who lived more than .7 of a mile from school, were provided with free lunchroom access.

Such a fee did not violate the Illinois Constitution's provision for a "free education" the court explained, because lunchroom supervision was a noneducational service "for which reasonable charges may be assessed."

The charging of nominal rental fees for textbooks was also reaffirmed in Segar v. Board of Education, 137 Ill. 418 (1925) and Hamer v. Board of Education, 265 N.E. 2d 616 (1971).

Local Issues

Many districts employ community fund-raising programs as a means of avoiding having to charge students on an individual basis for participating in cocurricular activities. Sometimes these fund raisers are used to support the entire cocurricular program and other times efforts are directed toward a specific activity.

Faced with substantial budget reductions, the Board of Education of Waterville, Maine, requested that each athletic team fund an amount equal to the bus driver's salary for all scheduled contests held away from the school, and that teams conduct additional fund-raising activities. Superintendent Edward L. White described the problems his district faced:

> The fall sports (football, soccer, field hockey) have strong booster clubs. These organizations, with some hesitation, decided to pick up the tab. The winter sports (basketball, hockey) are presenting a problem in that payment has not, to this point, been forthcoming.
>
> There has been and continues to be great resistance to this plan. In the final analysis it probably would have been far more palatable to all concerned to have reduced offerings.

Before the 1981 ruling by Michigan's attorney general that local boards of education lacked the statutory authority to charge students for participating in cocurricular intercholastic activities, many districts in the state did charge such fees. According to Harry Engels, athletic director of Cadillac High School, numerous questions were raised:

> Who is responsible for the collection of money, the coach or athletic director? Is there a time limit in which the money should be paid? If the money is not paid by that time, does that mean that the student is "off" the team?

The school board of Alpena, Michigan, does not provide any financial assistance to its athletic program nor are students charged a fee. Instead, the school board enters into contracts with citizen groups interested in sponsoring cocurricular programs. Areas of responsibility for both the school and the sponsoring club are detailed before the first game. Superintendent John H. Taylor explained the agreement:

> We hire the coaches and officials, schedule the games,and supervise the eligibility. The Rebound Club pays us the money for salaries prior to the first game. The Rebound Club transports all the students, supervises the games, takes care of publicity, and raises the money for all of the above.

By shifting the burden of raising funds from the school to citizen's groups, the school district does not have to concern itself with how the money is

raised. The district can focus its attention on the end product--were the sufficient funds raised? If so, the program is offered; if not, the program is discontinued.

In Winnsboro, South Carolina, Superintendent Raleigh E. Buchanan said that the problem of having to charge students for cocurricular activities is handled simply:

> The only extracurricular activity fee that we request of our students is a transportation fee from school to away contests. Since we have students driving our buses, we often defray some of this cost by using an athlete to drive the bus.

Another approach is used by the Jefferson County Public School System in Kentucky. If sufficient funds are not available in the district budget, the program or activity is eliminated.

Twenty-four Virginia superintendents described the cocurricular activities funding programs in their districts. Though state law allows boards of education to impose fees, these superintendents were unable to cite any districts in the state in which such fees were assessed.

Summary

Even after examining state statutes, court cases, school policies, and formal and informal opinions from commissioners of education, superintendents of schools, and attorneys throughout the country, this complicated issue of whether to charge students for participation in curricular or cocurricular activities remains unresolved.

The American educational system has traditionally operated under a motto of "excellence, equity, and equality" for all. In addressing this lofty goal, most local boards of education would like to provide a diverse curricular and cocurricular program appropriate for students of varying abilities, interests, and needs.

Utah's former state superintendent Walter D. Talbot offered the following advice for educators in his state:

> All of our students live in a world in which some people are able to experience added conveniences not available to everyone. But the educational program for students should be based on the needs, abilities, interests, inclinations, and aspirations of students, not on their economic condition or social standing.

Although virtually all states provide for a "free" public education, in truth this term is misleading. Education is not free; it is supported and maintained

by federal, state, and local dollars. Shrinking tax bases, escalating costs, and shifting concerns have eroded budgets and altered priorities to an extent that difficult choices must be made.

There seems to be little question that basic curricular offerings, especially those required for graduation, should be provided without charge. Supplies and textbooks for these courses should also be free, if at all possible.

Local boards of education generally reach compromise solutions on how completely elective courses and cocurricular activities should be funded, areas which may or may not be considered part of a free public education.

Whether this compromise will work has not been determined because the issue is complicated by philosophical and legal questions. What may happen, unfortunately, is that the battle for the budget dollar will continue to drive a deeper wedge between cocurricular activities and academics, and probably end a cooperative era in which both were considered essential in a "total" educational program.

Some Conclusions

1. Publicize in advance the purpose of your cocurricular activities. This may encourage community support and decrease the need to seek alternative sources of funds.

2. Before instituting any action, examine state statutes to determine whether user fees are legal. This may save you the time of pursuing the matter further. Also, read court cases from your state to see if any opinions have been rendered on this matter.

3. Contact other superintendents in your state who have instituted user fees. Their experiences may prove invaluable to you.

4. Decide whether it might be easier to eliminate the activity rather than charge user fees. Many considerations will have to be addressed if you institute fees, such as these:

   a. Will you charge for all activities, or for some? How will you determine which activities will be free and which will cost the student?

   b. How much will you charge? Will there be one fee or a different fee for each sport or activity? Will there be a limit on the amount of money charged per family? Will there be a discount for students who participate in multiple sports or activities?

   c. Will you have scholarship provisions for students who are unable to pay the fees? How will you determine eligibility for these scholarships?

5. If a student pays for an activity, must that student participate? What happens to the student who pays to play on a sports team but has little or no ability? This problem magnifies as the risk of injury increases. For example, a person who has little ability at golf is not in much danger of being injured. A person who has little ability to play football could well face serious injury.

6. If you decide to raise funds through the efforts of community groups, these questions may have to be answered. What happens if the necessary funds are not raised? What if community groups want to raise funds for only one sport such as football? How will the other sports be funded? How much say will these community groups have in the daily operation of the activity?

This *Legal Memorandum* was written by Thomas J. Pepe, superintendent, and Alice L. Tufts, director of instruction, Windham (Conn.) Public Schools. It originally was published in the May 31, 1984 issue of *West's Education Law Reporter*, Vol. 16, No. 4.

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